

No. 82-1949

Office - Supreme Court, U.S.

FILED

AUG 2 1983

ALEXANDER L. STEVANS

CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1983

LOIS EVELYNE SHAFF, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT*

MEMORANDUM FOR THE FEDERAL RESPONDENTS

REX E. LEE

Solicitor General

Department of Justice

Washington, D.C. 20530

(202) 633-2217

TABLE OF AUTHORITIES

Page

Statutes:

10 U.S.C. (& Supp. V) 1447-1455	1
10 U.S.C. (& Supp. V) 1450(a)	2
10 U.S.C. (& Supp. V) 1450(a)(3)	3

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 82-1949

LOIS EVELYNE SHAFF, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT*

MEMORANDUM FOR THE FEDERAL RESPONDENTS

Petitioner seeks review of the judgment of the court of appeals awarding benefits under the Survivor Benefit Plan, 10 U.S.C. (& Supp. V) 1447-1455 ("SBP"), to the children of Major Donald Shaff, a deceased officer of the United States Air Force. Petitioner claims that she is the lawful widow of Major Shaff, and therefore is entitled to the benefits.

1. Major Donald Shaff and petitioner were married in 1947 (Pet. App. A3). They did not have any children. In 1967, Donald Shaff left petitioner and, without informing her of his whereabouts, moved to Colombia, South America (*ibid.*). In March 1973, Donald obtained an ex parte divorce from petitioner in the Dominican Republic, and one month later married Luz Zoraida Velandia in Colombia (*id.* at A3-A4). In May 1973, Donald Shaff elected to participate in the SBP, naming as beneficiaries his "wife

and children"; on the election certificate, Donald Shaff identified Luz as his wife (*id.* at A4). Donald and Luz had two sons, Donald Eduardo and Leo Anthony (*ibid.*).

When Donald Shaff died in March 1978, Luz applied for and received benefits under the SBP (Pet. App. A4). In October, 1978, petitioner learned of Donald's death and applied for survivor benefits under the SBP as Donald's legal widow (*ibid.*). The conflicting claims were referred to the Comptroller General for resolution. In a decision issued January 23, 1980, the Comptroller General observed that the marital status of both petitioner and Luz was uncertain due to questions regarding the validity of the Dominican Republic divorce. Accordingly, the Comptroller General concluded that neither petitioner nor Luz could be paid benefits under the SBP, and he referred both parties to a court of competent jurisdiction (*id.* at C4).

2. Petitioner then brought suit against the United States and the Secretary of the Air Force in the United States District Court for the Northern District of California, seeking a declaration that she was entitled to the SBP benefits. She also sought to recoup \$829.96 in SBP benefits paid to Luz before petitioner had asserted her claim as legal widow. Luz intervened in the action. The district court determined that the Dominican Republic divorce was invalid under California law and that petitioner was therefore the legal widow of Donald Shaff (Pet. App. C16). Accordingly, the court ruled (*ibid.*) that petitioner was entitled to SBP benefits under 10 U.S.C. (& Supp. V) 1450(a). The district court also concluded, however, that petitioner was not entitled to recover payments made by the Air Force to Luz before the Air Force was aware of petitioner's claim (Pet. App. C16-C19). The court therefore entered summary judgment in favor of the government for the amount of benefits paid prior to November 1978 (*id.* at D4-D5).

Luz Shaff appealed the district court's judgment. The government did not appeal the grant of summary judgment in favor of petitioner because the government's position with regard to future SBP payments was (and remains) that of a stakeholder, with no interest in the outcome of the dispute between petitioner and Luz (Pet. App. A11 n.1). Petitioner did not appeal the district court's grant of summary judgment in favor of the government with respect to prior SBP payments made to Luz.

The court of appeals agreed with the district court that the Dominican Republic divorce was invalid and that petitioner was Donald's legal widow (Pet. App. A8). The court of appeals also concluded, however, that Donald Shaff had elected to participate in the SBP for the benefit of Luz and their children and not for the benefit of petitioner (*id.* at A9). Accordingly, the court held that petitioner was not entitled to benefits and that under 10 U.S.C. 1450(a)(3) benefits should be paid to the surviving dependent children of Luz and Donald (Pet. App. A10).

3. Petitioner seeks review of the decision of the court of appeals that she is not entitled to benefits under the SBP. Because petitioner did not appeal the district court's order in favor of the federal respondents on the issue of past SBP payments to Luz, that question was not before the court of appeals and is not now before this Court (see Pet. 6 n.3). With regard to the issues raised in the petition, the federal respondents have no direct interest. In accordance with the decision of the Comptroller General, the Air Force will pay SBP benefits to whichever party is ultimately found by the

courts to be entitled to the benefits. No question is presented with respect to which the United States has a programmatic need for review by this Court. Therefore, the federal respondents take no position with respect to whether the petition for a writ of certiorari should be granted.

Respectfully submitted.

REX E. LEE
Solicitor General

AUGUST 1983